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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/584,610	05/31/2000	Arnold P. Nerenberg	NERE-2842	2861

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EXAMINER

RIMELL, SAMUEL G

ART UNIT	PAPER NUMBER
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2175

DATE MAILED: 01/28/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/584,610

Applicant(s)

NERENBERG ET AL.

Examiner

Sam Rimell

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,4-10,12-17 and 19-21 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1, 4-10, 12-17, 19-21 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

SAM RIMELL
PRIMARY EXAMINER

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The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 4-8, 12-17 and 19-21 are rejected under 35 U.S.C. 102(b) as being anticipated by Death Visualization Therapy by Arnold P. Nerenberg, PhD.

Applicability of the Reference: The reference to Death Visualization Therapy is a booklet published by the inventor of record in the present application. Records from the U.S. Copyright Office indicate that a copyright for this booklet was registered on December 27, 1999. A copy of the copyright record obtained from the U.S. Copyright Office pertaining to this same booklet indicates publication on March 20, 1999. Since the publication date of March 20, 1999 is more than one year prior to the effective filing date of the present application, and meets the requirement of being “described in a printed publication” under 35 USC 102(b), the reference to Death Visualization Therapy is considered to be applicable as prior art under 35 USC 102(b).

Claim 1: Page 8 describes the provision of a coffin in a closed room for the purpose of conducting a psychological therapeutic method. As described on page 19, a first person (Joe’s Mother) and a second person (Joe) and brought into the room. The second person (Joe) is directed to lay in the coffin. The first person (Joe’s mother) can see the second person (Joe) in the coffin and is directed to speak to the second person (Joe) in regards to their personal relationship. Neither the first person or second personal are rehearsing or acting in a theatrical performance.

Claim 4: The first person (Joe's Mother) speaks to the second person (Joe) in regards to an emotion (page 19, lines 12-15)

Claim 5: The steps are performed by a facilitator (page 9, lines 9-13).

Claim 6: The facilitator is a professional therapist. In all the descriptions in the book, the facilitator is Arnold P. Nerenberg, PhD.

Claim 7: The coffin includes a visible pillow (page 8, line 3).

Claim 8: The lower portion of the coffin on the top side is covered or closed (page 8, line 5).

Claim 12: The first person (Joe's Mother) is instructed to speak to the second person (Joe) in regards to specific feelings (page 19, lines 14-15).

Claim 13: Both the first person (Joe's Mother) and the second person (Joe) are questioned after the completion of the session (page 20, line 21: page 15, lines 19-27).

Claim 14: When the first person (Joe's Mother) is directed to speak to the second person (Joe), the first person (Joe's Mother) is speaking to Joe as if he had died and is laying in a coffin, which would be a moment of despair.

Claim 15: The coffin used in the method serves as a trigger to induce specific thoughts leading to specific new behaviors.

Claim 16: Both the first person (Joe's Mother) and the second person (Joe) are directed to make pledges (page 23, lines 11-12; page 17, lines 1-4; page 17, lines 13-19, page 28, line 7).

Claim 17: The destructive habit primarily described in the Death Visualization Therapy book is parental disrespect, but other behaviors such as drug use and road rage are discussed (page 28, lines 18-20).

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Claim 19: See remarks for claim 1. Prior to the implementation of the method, both the first person (Joe's Mother) and the second person (Joe) are questioned (page 6, entire page).

Claim 20: See remarks for claim 4.

Claim 21: See remarks for claim 13.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 9-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Death Visualization Therapy, by Arnold P. Nerenberg, PhD in view of Official Notice.

Claims 9-10 differ from the Death Visualization Therapy booklet in that the book does not specifically recite the presence of audio or video devices.

Examiner takes Official Notice that the usage of audio or video devices to record the statements or behavior of individuals is very well known in psychology and psychotherapy.

It would have been obvious to one of ordinary skill in the art to modify the Death Visualization Therapy method in order to include recording devices so as to permit accurate recording and playback of the patient's behavior, as is well known in the art.

Remarks

Applicant's amendments have overcome the previously applied grounds of rejection under 35 USC 101. The rejection of claims 1, 4-10, 12-17 and 19-21 under 35 USC 102(b) and 35 USC 103 are sustained with this action.

The prior office action addressed a declaration under 37 CFR 1.132 submitted March 20, 2003. Applicant has now submitted a new declaration under 37 CFR 1.132 with the response of October 28, 2003. The new declaration includes seven points. Points 1-5 were already recited in the previous declaration submitted March 20, 2003, and thus do not need to be reconsidered. Points 6-7 are new points and are considered herewith.

Points 6-7 state the applicant filled out the copyright registration without any external assistance and that the recited date of publication in the copyright registration is not correct. By including such statement applicant is suggesting that the Death Visualization Therapy prior art reference was not made available to the public more than one year prior to the effective filing date of the present application.

In filing a copyright registration that recites a date of publication, the copyright applicant must sign that copyright registration and attest that the information being provided is correct (See copy of applicant's original copyright registration submitted with applicant's response of February 3, 2003). Applicant is now stating that the information which was certified as being correct is now considered as not being correct.

Since the copyright registration is considered to be prima facie evidence of a public disclosure, additionally supported by a verification by signature, applicant needs to provide factual evidence or actual proof that the assertion in the copyright registration is incorrect (Also see MPEP 716.01 (c), first paragraph....."To be of probative value, any objective evidence should be supported by actual proof").

Examiner finds that there is no objective evidence, factual evidence or actual proof that supports a conclusion that the copyright registration is incorrect. If anything, applicant's own

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signature attesting to accuracy in the copyright registration certainly does not support a conclusion that the information in the copyright registration is inaccurate. As no other factual evidence or actual proof is available, examiner cannot conclude that subject matter affirmed by applicant as being true is no longer true. The affidavit under 37 CFR 1.132 is thus not effective in resolving the rejection under 35 USC 102(b).

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication should be directed to Sam Rimell at telephone number (703) 306-5626.



Sam Rimell
Primary Examiner
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